order a bill and keep method for CMRS-to-LEC interconnection under its Section 201 jurisdiction over interstate common carrier rates.[84/]

**b. Nothing in the TCA Changes the Commission's Authority Over LEC-to-CMRS Interconnection.**

The TCA is a landmark piece of legislation that attempts to foster competition in all sectors of the communications field. By passing the TCA, Congress made plain that it expects and wants consumers to have a choice of providers for services such as basic local telephone service.[85/] The TCA is thus consistent with Congress' passage of the 1993 Budget Act, and the two pieces of legislation, when examined together, leave no question that Congress was entirely comfortable with the notion of CMRS as a source of alternative basic telephone service regulated at the outset by the FCC. Prompt implementation of an interim

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84/ Contrary to the assertions of Bell Atlantic, Pacific Telesis Group and BellSouth, the Commission has not stated that Section 332 preserves state regulation of the interconnection rates that LECs charge CMRS providers. See Kellogg Letter at 4 n.3; Notice at ¶ 112. In Petition on Behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction over Commercial Mobile Radio Services Offered Within the State of Louisiana, 10 FCC Rcd 7898 (1995), the Commission merely said that state regulation of intrastate CMRS interconnection rates "does not appear" to be restricted by Section 332. Id. at 7908. To the extent that this language is interpreted to mean that the Commission believed that Section 332 allows state regulation of CMRS interconnection rates, the Commission, as it recognized in the Notice, must and is prepared to reconsider its prior statement.

85/ See Preface to the Telecommunications Act of 1996, Joint Explanatory Statement of the Commission of Conference, 104th Cong. Rec. 1107 (January 31, 1996) ("Conference Report") (asserting intent of Congress to "provide for a pro-competitive, de-regulatory national policy framework to accelerate rapidly private sector development of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

bill and keep interconnection policy for CMRS on the national level is consistent with the Congressional goals of both the TCA and the 1993 Budget Act.

Nothing in the TCA changes the Commission's authority to order bill and keep. Section 251 of the TCA, the provision that governs LEC interconnection to all telecommunications carriers, establishes a broad framework for general LEC interconnection by imposing specific duties on the LECs. Nothing in Section 251 prohibits the Commission from imposing additional duties on the LECs; indeed, Section 251(i) specifically states "Nothing in this section shall be construed to limit or otherwise affect the Commission's authority under section 201."[86/] As the Conference Report states,

> New subsection 251(i) makes clear the conferees' intent that the provisions of new section 251 are in addition to, and in no way limit or affect, the Commission's existing authority regarding interconnection under section 201 of the Communications Act.[87/]

Accordingly, the authority over interconnection granted the Commission under Section 251 is in addition to the authority the Commission already possessed. The 1993 Budget Act already gave the Commission exclusive jurisdiction over CMRS interconnection by establishing that CMRS is an interstate service and that the Commission has sole authority to order

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86/ 47 U.S.C. § 251(i). As discussed above, Section 201 is the general provision in the Communications Act giving the Commission authority over common carrier rates such as interconnection.

87/ See Conference Report at 1110.

interconnection under Section 201. Therefore, Section 251 of the TCA "in no way limits or affects" this authority.[88/]

Similarly, nothing in Section 252 of the TCA restricts the Commission from adopting an interconnection compensation policy for all LEC-to-CMRS traffic. Section 252 states that, upon receiving a request for interconnection pursuant to Section 251, an incumbent local exchange carrier may negotiate an agreement pursuant to the statutory procedures adopted in Section 252.[89/] This language does not place restrictions on the Commission's power to establish a LEC-to-CMRS interconnection policy.[90/] Further, because Section 252 is not triggered unless a request for interconnection is made under Section 251, and because Section 251 does not prevent the Commission from establishing an interconnection policy for LEC-to-CMRS traffic under its general Section 201 powers, Section 252 has no particular relevance for any interconnection policy established by this proceeding (except that the

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88/ Amazingly, Bell Atlantic and Pacific Telesis Group completely ignore Section 251(i) in their argument that the TCA "expressly strips the Commission of the authority to mandate the terms and conditions of local interconnection arrangements." Kellogg Letter at 1. Proper statutory analysis, however, requires that all parts of a statute, and especially all parts of one section, be considered when the meaning of the statute and the intent of Congress is determined. See, e.g., Crandon v. U.S., 494 U.S. 152, 158 (1990) (Supreme Court looks to "design of the statute as a whole."); Mountain States Tel. & Tel. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985) (statutes should be interpreted so as not to render one part inoperative); see also 2A Sutherland Stat. Const. § 46.05 (statutes are "passed as a whole and not in parts or sections") and § 46.06 ("A statute should be construed so that effect is given to all its provisions . . .").

89/ 47 U.S.C. § 252(a)(1) (emphasis added).

90/ Again, Bell Atlantic and Pacific Telesis Group ask the Commission to ignore the plain meaning of the statute by attempting to depict a discretionary statutory section as mandatory. Kellogg Letter at 3.

pricing standards contained in Section 252 provide reasonable support, by analogy, for the Commission's bill and keep CMRS decision).

If the Commission intends to follow the policy mandates of the TCA it will order a bill and keep interconnection policy for LEC-to-CMRS interconnection as swiftly as its internal regulatory process will allow. The Commission adopted the Notice on December 15, 1995, more than six weeks before the TCA was passed in its final form, and Congress was surely aware of the Commission's stated intention to move forward in this area. If Congress had wanted progress on a federal LEC-to-CMRS interconnection policy to stop until a broader landline interconnection policy was established, it could have so determined. It did not. Consequently, the Commission should not await the outcome of a broader rulemaking required by Section 251(d).

Congress has shown in yet another provision of the TCA that it regards CMRS as a special form of telecommunications service that, at least at this time, requires its own unique regulatory environment.[91/] The Commission should follow Congress' lead. Adopting bill and keep now as an interim measure also is consistent with the interconnection standards the Commission and states are directed by the TCA to apply to interconnecting LECs.[92/] In turn,

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91/ See, e.g., 47 U.S.C. § 253(e).

92/ For example, the TCA requires the establishment of reciprocal compensation arrangements for the transport and termination of telecommunications, requires that the terms and conditions of the reciprocal compensation arrangements be based on incremental costs, and specifically states that arrangements that provide for the mutual recovery of costs through the offsetting of reciprocal obligations, such as bill and keep, are permitted. See 47 (continued...)

the exploration of compensation methods in this proceeding can and should provide important direction for the Commission's larger and more involved proceeding to implement the TCA.

The Commission has the authority to determine what federal CMRS interconnection policy is in the public interest, and Cox urges the Commission to take action promptly. It would be an abdication of responsibility to establish "voluntary guidelines" the states could choose to ignore,[93/] and the Commission should not adopt a federal policy for state commissions to implement at whim.[94/] Such an approach would be plainly inconsistent with the TCA's market-opening provisions that requires federal preemption of state barriers to entry.[95/]

As the Commission recognized in the Notice, CMRS service areas often cross state lines, and competition will not flourish if CMRS providers must wait for individual states to act to grant or deny CMRS providers the benefit of reciprocal compensation. Cox

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92/ (...continued)
U.S.C. §§ 251(b)(5), 252(d)(2)(A)(ii) and 252(d)(2)(B)(i).

93/ See Notice at ¶ 108.

94/ See Notice ¶ 109. Some states may refuse to adopt a federal policy, finding that because they do not have general jurisdiction over CMRS providers, they will not allow LECs and CMRS providers to enter into mutual compensation agreements. See, e.g., DPUC Investigation into Wireless Mutual Compensation Plans, Decision, State of Connecticut Department of Public Utility Control, Docket No. 95-04-04 (released September 22, 1995) at 15 ("Without the corresponding ability to impose local service obligations and responsibilities on wireless carriers, the Department will not authorize SNET to enter into mutual compensation agreements with such carriers. Wireless carriers, therefore, are limited to the mutual compensation provided for by federal law and the rules and regulations of the FCC, i.e. compensation for interstate traffic.").

95/ See 47 U.S.C. § 253.

recognizes and applauds those states that have taken the pro-competitive stance of instituting bill and keep interconnection polices for landline competitors. But these states are still a minority and may not agree in any event that wireless providers deserve the same arrangements as landline competitors.[96/] Cox and other CMRS providers cannot wait for the rest of the nation to follow on a state-by-state basis and run this risk that CMRS providers be forced to the choice of "voluntary" submissions to state regulation so as to gain the benefit of economic interconnection. Section 332 explicitly preempts state CMRS rate regulation and Congress intended for CMRS rate regulation to occur on the national level under the Commission's broad Section 201 powers. Commission preemption of LEC-to-CMRS interconnection rates is mandated by law and is sound public policy, and Cox urges the Commission to move forward to establish bill and keep.

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96/ Cox has attached a state-by-state compensation rule chart to these comments. Of the twelve states that have considered competitive landline interconnection compensation, two-thirds have adopted forms of bill and keep. Several states, such as Connecticut and California, have denied the benefit of bill and keep to CMRS providers unless they submit to state jurisdiction, an action plainly not contemplated by either the 1993 Budget Act or the TCA.

## III. INTERCONNECTION FOR THE ORIGINATION AND TERMINATION OF INTERSTATE INTEREXCHANGE TRAFFIC.

The Notice raises the issue of whether CMRS providers should collect access charges for the termination interexchange traffic. While the FCC should look at this issue, changes to mobile carrier "equal access" policies are reflected in the TCA and any decision on CMRS to interexchange carrier access charges can and should be made in the FCC's implementation proceeding.

## IV. APPLICATION OF THESE PROPOSALS.

The Notice seeks comment on whether the proposed interconnection policies should apply to interconnection between LECs and (1) broadband PCS providers only; (2) broadband PCS, cellular telephone, SMR, satellite telephony and other CMRS providers of two-way point-to-point voice communications; or (3) all CMRS providers.[97/] Cox urges the FCC to apply the bill and keep mutual compensation model proposed herein to all commercial providers of two-way voice communications, including providers of PCS, ESMR and cellular service.

Broad application of pro-competitive interconnection policies to similarly situated providers of two-way mobile communications is consistent with the Commission's policy of regulatory parity. In the past, the Commission aggressively has sought to create a system of regulatory obligations that treats providers of "like" services similarly. Offering PCS, cellular and ESMR providers the benefits of bill and keep will ensure that no potential competitor to the incumbent LEC monopoly is disadvantaged in connecting to the local

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97/ See Notice at ¶ 118.

exchange network. The result will be more robust competition in the local exchange market and more immediate choices for the American public.[98/]

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98/ Whether wireless providers currently have sufficient spectrum to compete for local traffic should not dictate the extent of the LECs' interconnection obligations. Because cellular systems are capable of upgrading to digital technology in response to customer demand, all current and potential digital wireless systems should benefit from the Commission's pro-competitive bill and keep interconnection policies, regardless of their present technical capabilities.

## V. RESPONSES TO INITIAL REGULATORY FLEXIBILITY ANALYSIS.

[No comments at this time].

## VI. OTHER.

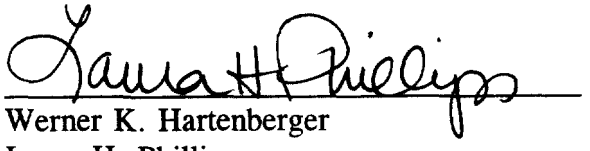
[No comments at this time].

## VII. CONCLUSION.

The FCC was given the jurisdiction in the 1993 Budget Act to displace the anti-competitive interconnection arrangements imposed by LECs on cellular providers. The FCC must seize this opportunity now and adopt interim bill and keep for CMRS to LEC interconnection. The FCC will not only be advancing the objectives of Congress as expressed in the Budget Act, to foster economic growth and serve the interests of consumers by promoting competition in the mobile services marketplace, but it will be laying a positive foundation for its task of implementing the TCA. The FCC should act in a manner that reduces governmental burdens while increasing the potential for near term facilities-based competition.

Respectfully submitted,

COX ENTERPRISES, INC.



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## COMPENSATION RULES ADOPTED IN STATE PROCEEDINGS

*as of 3/1/96*

| *STATE* | *A FORM OF BILL AND KEEP ADOPTED?* |
|---|---|
| ***Arizona*** | Yes. The Corporation Commission has proposed using bill and keep for three years |
| ***California*** | Yes. The Public Utility Commission has required the use of bill and keep on an interim basis for one year |
| ***Connecticut*** | Yes. The Department of Public Utility Control has required the use of bill and keep for 18 months, followed by negotiated cost-based rates |
| ***Illinois*** | No. The Commerce Commission has required a usage-based charge of .5 cents per minute for end office and .75 cents per minute for tandem |
| ***Iowa*** | Yes. The Utilities Board has required the use of bill and keep on an interim basis pending approval of cost-based tariffs |
| ***Maryland*** | No. The Public Service Commission has required a usage based charge of .3 cents per minute for end office and .5 cents per minute for tandem |
| ***Michigan*** | Yes. The Public Service Commission has required on an interim basis a usage based charge of 1.5 cents per minute with bill and keep in effect if the traffic volume of the two carriers is within 5 percent of each other |
| ***New York*** | No. The Public Service Commission has established a framework in which CLECs pay an access charge that is less than the charge paid by IXCs; flat rate and usage-based options must be made available |
| ***Oregon*** | Yes. The Public Utility Commission has required the use of bill and keep on an interim basis for up to two years |
| ***Pennsylvania*** | No. The Public Utilities Commission has required all carriers pay into an escrow account pending adoption of cost-based rates |
| ***Washington*** | Yes. The Utilities and Transportation Commission has required the use of bill and keep until number portability is implemented and other barriers are removed, followed by negotiated rates that reflect the manner in which costs are caused (i.e. primarily non-traffic sensitive) |